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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 Cr. 867 (RMB)

5 MEHMET HAKAN ATILLA,

6 Defendant.

7 -----x

8 November 21, 2017

9 10:20 a.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

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APPEARANCES

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Southern District of New York

BY: DAVID DENTON
MICHAEL D. LOCKARD
Assistant United States Attorneys

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LAW OFFICES OF JOSHUA L. DRATEL, P.C.
Attorneys for Defendant

BY: JOSHUA L. DRATEL

ALSO PRESENT: ASIYE KAY, Turkish Interpreter
SEYHAN SIRTALAN, Turkish Interpreter

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1 (Case called)

2 THE COURT: A few comments from me. Welcome

3 Mr. Harrison.

4 MR. HARRISON: Thank you, your Honor.

5 THE COURT: Do I understand that Mr. Evans is with you
6 also today?

7 MR. HARRISON: Yes, your Honor.

8 MR. EVANS: Yes, your Honor.

9 THE COURT: So, let me come back to that in just one
10 minute. I just have a few comments that I thought I would
11 start with.

12 First, we have a Turkish language interpreter and I
13 just want to make sure that Mr. Atilla is able to understand
14 these proceedings with the help of the interpreter.

15 THE DEFENDANT: Yes, I can follow it, your Honor.

16 THE COURT: Mr. Atilla, just for my information, do
17 you follow the English, or the Turkish, or both?

18 THE DEFENDANT: Mostly I try to follow the Turkish.

19 THE COURT: Good. Okay.

20 So, point number one is that this is our last
21 pre-trial conference in this case and I need to add that I am
22 not going to entertain any more eleventh or twelfth-hour calls
23 from counsel as I did this past Sunday, for example, which was
24 the precursor for yesterday's hearing in the morning. I'm not
25 suggesting that it was inappropriate, I don't feel that way,

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1 but that's it, until we start the trial. And in that
2 connection, it's my opinion that the defense team, which
3 currently consists of at least five and hopefully after this
4 morning six and seven very experienced attorneys, as
5 experienced a team for Mr. Atilla as probably can be assembled.

6 I am not interested, and of course you aren't either,
7 in me making defense suggestions but here is one that you
8 probably thought of already which I do want to share with you.
9 It's my suggestions that, if you haven't already done this,
10 that all defense counsel should meet and confer quickly and
11 select a defense quarterback for several reasons. I am using
12 the word quarterback, I mean someone to coordinate,
13 particularly with the Court, but also to divide the work load
14 among yourselves. So, for example, who cross-examines which
15 witness, who does the opening, who does the closing, who picks
16 the jury, who presents the defense case. I think it is all
17 very doable if there is proper coordination. So, I am sure
18 that's already in the works but I wanted to share that with
19 you.

20 In that regard, we are going to have a conflicts
21 hearing this morning. There is one among you, I think one --
22 yes, I think Mr. Dratel you may be the only counsel that is
23 fully conflict-free as it were, and even potential conflict.
24 I'm not suggesting -- we had Curcio hearings for everybody else
25 in which potential conflicts were discussed and I think you,

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1 who are, by the way, participating full-time now in the trial
2 and in the proceedings, you are the only one who has no
3 conflict or potential conflict; is that correct?

4 MR. DRATEL: I know I don't. I have had Curcios with
5 current counsel.

6 THE COURT: So, the trial will commence immediately
7 after jury selection is completed and you all need to be ready
8 for that. I don't have a lot of breaks during the trials
9 except the normal one in the morning and one in the afternoon,
10 particularly for the jury. If one side or the other runs out
11 of continuous witness presentation then the case is over for
12 that side. We work five days a week, we start at 9:15. Likely
13 on Friday it depends where we are in the case, we might adjourn
14 at 1:00 or 2:00 in the afternoon instead of going to 4:45,
15 which is our usual finish. During the case I do very few side
16 bars.

17 So, the next point is I'm going to ask you, not
18 immediately but certainly during the course of today's
19 proceeding, what your thoughts are about an anonymous jury. I
20 mention this because it is a high-profile case but also because
21 I have heard, I guess it is hearsay for sure, but I have heard
22 of people involved in the case being approached, frankly I
23 think inappropriately by third-parties, and that even includes
24 court interpreters. So, that's the basis for my raising the
25 issue of an anonymous jury.

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1 If it were to come to my attention that there was a
2 further inappropriate contact of anybody associated with the
3 case, you can rest assured that I would refer that to
4 appropriate authorities.

5 So, we are about to have a Curcio proceeding with
6 respect to Mr. Harrison. Mr. Harrison is a partner at
7 McDermott Will & Emery, and without trying to foreshorten, an
8 outstanding background, considerable time spent in the Eastern
9 District of New York as a U.S. Attorney; is that a fair
10 statement?

11 MR. HARRISON: Yes, your Honor. Thank you.

12 THE COURT: So, I am going to turn to the questions
13 that Mr. Harrison has actually proposed.

14 We have Mr. Lockard. Okay.

15 MR. LOCKARD: Your Honor, I'm so sorry to interrupt,
16 your Honor, but we had discussed with Mr. Atilla's counsel two
17 additional potential questions and with the Court's --

18 THE COURT: If you would just hold off with that for
19 just one second?

20 MR. LOCKARD: Yes, your Honor.

21 THE COURT: So, I was going to say that the questions
22 cover all the topics, they are not precisely in the same format
23 as the questions that I asked Mr. Rocco, the Herrick firm also
24 represents banks, so-called victim banks and also has done work
25 for the Republic of Turkey, as does McDermott Will, as I

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1 understand it. I am going to in a minute, Mr. Harrison, just
2 ask you about that.

3 So, the questions are not identical, they cover the
4 same topics, and if anybody does have -- well, is everybody at
5 the defense table comfortable with the questions I have
6 received from Mr. Harrison for Curcio purposes?

7 MR. ROCCO: Yes, your Honor.

8 MR. DRATEL: Yes, your Honor.

9 MS. FLEMING: Yes.

10 THE COURT: And the government, you have some
11 additions, do you?

12 MR. LOCKARD: We had suggested a couple of questions
13 to supplement the Curcio proceedings.

14 THE DEPUTY CLERK: You need to speak louder counsel.
15 I'm sorry.

16 MR. LOCKARD: To address the issues raised in
17 Mr. Harrison's letter as well as discussed yesterday. And with
18 the Court's indulgence, if I can consult briefly with
19 Mr. Dratel, Ms. Fleming, Mr. Rocco, we can hand those up,
20 assuming those are all --

21 THE COURT: Are you going to write them out?

22 MR. LOCKARD: We have them printed out.

23 THE COURT: Hold on for one second. I have one or two
24 more points to make and we will take a little break while you
25 do that.

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1 So, this Curcio hearing, as I say, is occasioned by
2 Mr. Harrison's retention by Mr. Atilla, and Mr. Harrison has
3 also filed a notice of appearance to join the current defense
4 team and assist at the trial and he, as I say, you are very
5 welcome to join this group, Mr. Harrison, once we get through
6 this Curcio situation.

7 One last point. I hope nobody is offended by this,
8 but I am aware that there is a lot of press coverage about this
9 case and a lot of comment about the case in the media including
10 comment which is attributed to Turkish officials, some of it
11 critical of the prosecution. I certainly believe -- I am sure
12 you all do as well, that -- in freedom of speech and so
13 officials are free to comment. We have an expression "armchair
14 quarterback." If one wants to, thinks they can improve on Tom
15 Brady's performance, they are free do it and lots of people do.

16 I have a suggestion, however, and that is this,
17 particularly if it's Turkish officials who want to be helpful
18 to the defense of Mr. Atilla, Mr. Zarrab. In my opinion
19 they -- and maybe they have, so maybe this is just academic,
20 but the best way for them to have been helpful is to help the
21 defense counsel by producing, in court, any Turkish evidence or
22 witnesses that they may be aware of who could assist the
23 defense in presenting their case and that would include any
24 Halkbank employees who may have relevant evidence.

25 So, with that, I will give you a minute or two to go

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1 over the questions that the government may wish to add and then
2 we will proceed with the Curcio.

3 MR. ROCCO: We are okay with the proposed questions,
4 your Honor.

5 THE COURT: Oh, you are? Is everybody?

6 MR. DRATEL: Yes.

7 MS. FLEMING: Yes.

8 THE COURT: Okay. Counsel, did you say where they
9 should be inserted? Is this, counsel, at the end or at the end
10 of a particular section?

11 MR. LOCKARD: At the end of the section about the
12 payor conflict.

13 THE COURT: Yes. Those questions look perfectly fine
14 to me as well.

15 So, perhaps, Mr. Harrison, I could start with you and,
16 by the way, you were kind enough to produce a retainer
17 agreement which I have, it is dated November 14, 2017, and it's
18 on the letterhead of McDermott Will & Emery and it is addressed
19 to Mr. Atilla, and it appears to have been signed on page 2 by
20 yourself, by Mr. Atilla -- I'm not sure I can make out the
21 other names but they appear to be signatory, at least one, on
22 behalf of Halkbank. If you look at page 2, there is a third
23 signature -- I am not sure. Am I missing something? One,
24 two -- there is four signatures.

25 MR. HARRISON: Do you want me to remain seated, Judge?

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1 Take the podium? What do you want?

2 THE COURT: Whatever you are most comfortable with.
3 If you bend that microphone toward you, you are welcome to stay
4 right there.

5 MR. HARRISON: Okay.

6 I am just looking for the names, Judge. The "signed
7 on behalf of Halkbank by" the current CEO Osman Arslan, which I
8 believe is A-R-S-L-A-N.

9 THE COURT: Is that his name to the right of
10 Mr. Atilla?

11 MR. HARRISON: I believe there is also a name there,
12 Mehmet, M-E-H-M-E-T, Sellimli, S-E-L-L-I-M-L-I.

13 My understanding, Judge, is that is sort of a notary
14 and this is the official-official signature of the bank and the
15 CEO.

16 THE COURT: And above that, is that Mr. Atilla?

17 MR. HARRISON: Yes, Judge.

18 THE COURT: All right.

19 And if you could, just for the record, tell us a
20 little bit about how this representation came about and the two
21 areas of potential conflict that we need to discuss today: One
22 having to do with your firm's representation, as was the case
23 of Mr. Rocco's firm for want of a better term, victim banks,
24 that was number one; and two, your firm has representation of,
25 which I will ask you to explain. It appears to be of the

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1 Turkish government in some fashion, of their delegation to the
2 European union.

3 MR. HARRISON: That's correct, your Honor.

4 THE COURT: Okay.

5 So just tell us, spend a minute and tell us how you
6 have come into the case.

7 MR. HARRISON: First, to clarify, I just want to make
8 sure about the signatures because I just pulled my copy.

9 THE COURT: Okay.

10 MR. HARRISON: I think you asked if Mr. Atilla, my
11 client's signature was above the CEO. It is below, it is the
12 last one on page 3, just to be clear.

13 THE COURT: Ah. Of course. So, then there are four
14 on this page, page 4 of 8. Or am I missing something?

15 MR. HARRISON: No. I think -- on page 2 there is my
16 signature over my printed name.

17 THE COURT: Right.

18 MR. HARRISON: Then there is Mehmet Sellimli, which I
19 believe is sort of a notary-type person. He has his signature
20 on top and then he printed his name out below.

21 THE COURT: I see.

22 MR. HARRISON: And then the CEO signed his name and
23 printed his name out below, is my understanding.

24 THE COURT: On the line "printed name," those are two
25 names; is that right?

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1 MR. HARRISON: I'm sorry. I didn't hear you.

2 THE COURT: On the line that is denoted as "printed
3 name," those are two names, one is Mr. Sellimli and one is
4 Mr. Arslan; is that correct?

5 MR. HARRISON: I'm sorry. I have just been corrected
6 Mr. Sellimli, I guess, is better described as a legal advisor
7 for the bank rather than just a notary.

8 THE COURT: So that's his printed name and directly
9 above his printed name is his signature?

10 MR. HARRISON: Yes.

11 THE COURT: And to his right is the bank's CEO, is
12 that Mr. Arslan.

13 MR. HARRISON: That's my understanding, Judge.

14 THE COURT: And above that is his signature as well?

15 MR. HARRISON: Yes, Judge.

16 THE COURT: Okay.

17 And, Mr. Atilla, we see that on the next page. Great.
18 Okay.

19 MR. HARRISON: So, just, your Honor, I say this for
20 three different questions. One is sort of how I originally got
21 involved; and two about the two different conflicts related to
22 banks in the Republic of Turkey.

23 THE COURT: I don't mean to ask you to disclose any
24 attorney-client privilege.

25 MR. HARRISON: Yes.

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1 THE COURT: So.

2 MR. HARRISON: I am going to try and be careful about
3 that, Judge. And if the Court wants to inquire more, I am
4 happy to answer whatever questions the Court has, obviously.

5 So, as I understand it, Halkbank is currently
6 represented by King & Spalding and, in particular, a partner at
7 King & Spalding named Andrew Hruska. My understanding is that
8 he was relatively recently engaged by Halkbank. Mr. Hruska and
9 I were colleagues at the U.S. Attorney's office in the Eastern
10 District of New York.

11 Relatively recently, less than two weeks ago, Judge,
12 Mr. Hruska asked me if I would be available to assist on a
13 trial that was coming up very soon that was very complicated.
14 He didn't tell me what the trial was at that time or exactly
15 what was going on, he just asked my availability and if I would
16 be willing to do it, that it would be a relatively lengthy
17 trial, relatively complicated, there were a lot of issues and
18 documents, and if it was the kind of thing I would be willing
19 to take on in terms of joining the current defense team,
20 whoever that was -- he didn't tell me at that time. But, he
21 indicated he had been in communication with the defense team.
22 I told him that I would be willing to do that and he said,
23 fine, I will get back to you.

24 Then, a few days, maybe a week later, so this is, I
25 guess, about a week and a half ago, your Honor, I don't have

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1 the calendar in front of me, but it was a week ago from last
2 Friday he and I had a conversation either that day or perhaps
3 the day before where he called me up and asked me if I was
4 still willing to do it, gave me a little bit more detail, gave
5 me Mr. Atilla's name and gave me a very brief description of
6 the case and asked me if I would be willing to meet -- he
7 actually asked me if I would be willing to meet on that Friday,
8 Judge. It turned out we couldn't meet on that Friday so we set
9 up a meeting for Monday at 8:00 a.m. at his office.

10 I went and met with him, he described the case in a
11 little bit more detail and his basic point was, you know, it is
12 a very complicated case, it has been put on for trial in
13 relatively short order was his opinion, and he felt like the
14 defense team needed help. My understanding was that he had
15 been in communication with the defense team.

16 So, he asked me if I would join the defense team and I
17 told him I was willing to try and look into it. And he also
18 indicated to me that it was his understanding that, from
19 speaking to people at the Bank and relatives, apparently, of
20 Mr. Atilla, that he was also interested in having another
21 lawyer join the team. So I said, well, I've got to talk to him
22 myself and determine that for myself. I was, I suppose, a
23 little bit weary. I don't know much about Turkey itself or
24 Turkish politics but I do read the papers and I knew that there
25 was some heated political battles going on, that there had

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1 recently been a coup in Turkey --

2 THE COURT: Excuse me. I think an unsuccessful coup.

3 MR. HARRISON: I'm sorry. Attempted coup. Just what
4 I read in the papers, I am not a Turkish follower.

5 THE COURT: Me too.

6 MR. HARRISON: So it is a little bit -- I didn't
7 know -- it is not that I didn't believe Mr. Hruska, he is a
8 trusted colleague who I think has a lot of integrity, but I
9 wanted to see for myself and I told him I had to talk to
10 Mr. Atilla for myself.

11 So, I and Mr. Evans, my associate, after talking
12 internally to our ethics people, doing a little bit of ethics
13 research and making sure that it was okay for me to talk to
14 Mr. Atilla, went down the next morning and talked to Mr. Atilla
15 at the MCC. That's how I originally met with him.

16 THE COURT: And just a minute on the, these potential
17 conflicts.

18 MR. HARRISON: Sorry, Judge.

19 THE COURT: And I take nothing in your work at the
20 U.S. Attorney's office poses any conflict to this case?

21 MR. HARRISON: No, Judge.

22 THE COURT: Right.

23 So, there is two issues. Tell us first about the
24 delegation, the Turkish delegation to the European Union.

25 MR. HARRISON: So, I did a conflicts check, Judge, in

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1 our system, and it came back with the only thing that our firm
2 does in relation to the Republic of Turkey is we have a partner
3 in our office in Belgium in Europe who advises some delegations
4 on commercial matters, as I understand it, mostly trade-type
5 issues. He occasionally advises the Republic of Turkey
6 delegation to the European Union on commercial-related issues.
7 It is a relatively minor matter but it is an ongoing
8 representation.

9 THE COURT: And as for the banks, there are these
10 so-called victim banks in this case. You are probably familiar
11 with the list. You represent some or all -- not you but your
12 firm represents some or all of those banks?

13 MR. HARRISON: Yes, Judge.

14 So, there are a couple different lists in the docket
15 and so we took the most expansive list of banks that we saw and
16 I have ran conflicts checks on those things and talked to all
17 the relationship partners who deal with those banks and let me
18 just quickly break it down, as follows.

19 So, of the list of banks that we saw, at some point in
20 time our firm, which is a big firm, has done work for --
21 unrelated work, nothing related to this case in any way, for
22 all of those banks. Currently, I believe there is one or two
23 of those banks that we are not currently engaged with but the
24 rest of them we do have current representations, nothing that
25 is related any in any way to Mr. Atilla or this trial or the

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1 allegations from the government at this trial. It is things
2 like employee benefits and contracts work and corporate work,
3 things like that. So, we have done all of that, all of that
4 checking.

5 There is one matter for one of the banks that is not
6 public that I think I need to talk to the Court a in a little
7 bit more detail about to clarify. I don't think it is an issue
8 but I would like to bring it to the Court's attention but I
9 cannot do that in open court.

10 THE COURT: Okay. I am happy to do that with you at
11 some point. In your opinion, is that going to preclude your
12 representation, in your opinion, in this matter?

13 MR. HARRISON: No, Judge. It is an unrelated matter
14 but it is a matter that I am involved in which is why I wanted
15 to bring it to the Court's attention.

16 THE COURT: Okay. So I can either do it now or later.

17 MR. HARRISON: At the Court's pleasure.

18 THE COURT: If you think it is -- well, let's do it a
19 little bit later on then.

20 MR. HARRISON: Sounds good, Judge. Thank you.

21 THE COURT: Okay. That's great.

22 So I am going to make the retainer agreement a Court
23 exhibit to this proceeding and let's turn to some of these
24 Curcio questions.

25 So, Mr. Atilla, we will need to swear you in. You

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1 have some experience already with these Curcio proceedings.
2 The questions, I don't know if you have seen the list of
3 questions that I have, they're similar and not exactly the same
4 form as previous questions.

5 Here is Mr. Lockard again.

6 MR. LOCKARD: I'm sorry, your Honor.

7 THE COURT: Yes.

8 MR. LOCKARD: Just with respect to the last nonpublic
9 representation that Mr. Harrison had discussed?

10 THE COURT: Yes.

11 MR. LOCKARD: I think even if it is to be addressed
12 with the Court later, just to confirm that Mr. Harrison had
13 discussed it with Mr. Atilla before he answers the questions?

14 THE COURT: Fair point.

15 MR. HARRISON: That's an excellent point, Judge.

16 I went back in my notes to check and make sure that I
17 had referenced this with Mr. Atilla because my memory is that I
18 did. I don't see it in my notes so I think we should be
19 extra -- we should --

20 THE COURT: Oh. All right. So, you know what? We
21 will do two things. We will deal with it now. Why don't you
22 and I spend a moment with the court reporter in the robing
23 room -- well, why don't you and Mr. Atilla, actually, spend a
24 couple of minutes first and with Mr. Dratel helping in that
25 regard, and then we will talk. Okay?

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1 MR. HARRISON: Thank you.

2 THE COURT: So we will go off the record for a moment.

3 If you want to go into the holding area that might be
4 better, and the interpreter could perhaps go with you.

5 (Recess)

6 THE COURT: I take it you have had an opportunity to
7 talk to Mr. Atilla?

8 MR. HARRISON: Yes, your Honor.

9 THE COURT: And if you want to come up and talk to me,
10 I am happy to.

11 (Pages 20-21 SEALED by order of the Court)

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1 (In open court)

2 THE COURT: So, the questions, we will swear in -- did
3 I do that?

4 THE DEPUTY CLERK: No, Judge.

5 THE COURT: Mr. Atilla, we need to swear you in.

6 THE DEPUTY CLERK: Sir, if you could stand for a
7 moment, please, and raise your right hand?

8 THE DEFENDANT: I don't want to raise my hand.

9 THE DEPUTY CLERK: Understood.

10 (Defendant sworn)

11 THE DEFENDANT: Yes, I swear that I will answer all
12 the questions truthfully.

13 THE DEPUTY CLERK: Thank you, sir. You may be seated.

14 THE COURT: Thank you.

15 Now, Mr. Atilla, you understand what this -- the
16 purpose of today's Curcio proceeding and questions that I am
17 about to ask you?

18 THE DEFENDANT: Yes, your Honor, I know.

19 THE COURT: Okay.

20 So, I am just doing this to have a complete record and
21 until we finish, you realize that I have not yet determined
22 whether McDermott Will & Emery should represent you as counsel
23 in this matter? You realize that?

24 THE DEFENDANT: Yes, I understand, your Honor.

25 THE COURT: I should add that based on other

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1 proceedings in this case, it seems very likely that there will
2 be no problem with Mr. Harrison's representation but let's wait
3 until we get to the end.

4 So, if I may ask you your age?

5 THE DEFENDANT: 47.

6 THE COURT: And your education, how far you went in
7 school?

8 THE DEFENDANT: I studied economy. I finished
9 university, bachelors degree.

10 THE COURT: And whether you are taking current
11 medications? You don't have to tell me what they are but if
12 you are.

13 THE DEFENDANT: No, I'm not taking anything.

14 THE COURT: And, have you had any medications,
15 alcohol, drugs, within the past 24 hours?

16 THE DEFENDANT: I didn't use anything.

17 THE COURT: And, is there anything including language
18 differences that interferes with your ability to understand
19 what's happening in court here today?

20 THE DEFENDANT: There isn't anything at the moment.

21 THE COURT: So, the next series of questions relates
22 to the fact that the legal fees of Mr. Harrison and his firm
23 are being paid by your employer Halkbank, and the first
24 question is are you aware that your employer, Halkbank, is
25 paying for your legal fees and expenses in this matter of

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1 Mr. Harrison and his firm?

2 THE DEFENDANT: Yes, I am aware of that.

3 THE COURT: And are you also aware that Halkbank is
4 paying legal fees and expenses for other attorneys at
5 McDermott -- at the McDermott firm?

6 That would include, I guess, Mr. Evans; is that right?

7 MR. HARRISON: Yes, your Honor.

8 THE DEFENDANT: Yes, I know.

9 THE COURT: And, the fact that Halkbank is the paying
10 party of your McDermott legal fees and expenses was set forth
11 in the retainer agreement that I referred to a few minutes ago,
12 and both you and Halkbank signed the retainer agreement? I
13 will just ask you about yourself, that was your signature on
14 that agreement; is that right?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And you are also aware that Halkbank is
17 majority-owned by the Republic of Turkey?

18 THE DEFENDANT: Yes, I'm aware of that.

19 THE COURT: And are you aware that, what is referred
20 to as the permanent delegation to the European Union of the
21 Republic of Turkey, is also a client of the McDermott firm?

22 THE DEFENDANT: Yes.

23 THE COURT: And, do you understand that the reasons
24 for this Curcio proceeding, in principal part, are because of
25 the fee arrangement as well as the representation of the

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1 permanent delegation and other banks by McDermott might cause
2 them -- potentially could cause McDermott to take positions in
3 this case before trial, during the trial, at sentencing if that
4 were ever to come about or on appeal if that ever eventuated,
5 that are critical of Halkbank even if criticizing the bank
6 might help you in your defense? So, the potential conflict
7 that could arise between the bank and McDermott's
8 representation of you.

9 You're aware of that issue?

10 THE DEFENDANT: Yes, I'm aware of it.

11 THE COURT: And, I should point out that the retainer
12 agreement with McDermott also provides that you are McDermott's
13 only client in this matter, meaning in the case here in court
14 and therefore McDermott is not representing either Halkbank or
15 the permanent delegation to the European Union of the Republic
16 of Turkey or any other bank in this matter.

17 Do you realize that?

18 THE DEFENDANT: I understand and I confirmed that with
19 him.

20 THE COURT: Then did you understand that since you are
21 McDermott's only client in this matter, McDermott has expressed
22 that it owes you a duty of undivided loyalty in this matter?

23 Do you realize that?

24 THE DEFENDANT: Yes. I'm aware of that and he
25 promised me that.

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1 THE COURT: And, do you recognize that your interests
2 in a public trial of the charges in this case, upon which we
3 are about to embark, may be different from the interests of
4 Halkbank? Do you realize that?

5 THE DEFENDANT: Yes. Of course I'm aware of that.

6 THE COURT: And I think it's also fair to add that
7 it's conceivable that they may be different than the interests
8 of the Republic of Turkey as well. Is that a fair statement?

9 THE DEFENDANT: We would be able to say that, your
10 Honor.

11 THE COURT: And have you consulted with Mr. Dratel,
12 who was originally retained to help us work through these
13 conflict issues and now has taken on the role of representing
14 you full-time during the course of this trial, have you
15 consulted with him about Halkbank's paying McDermott's legal
16 fees and expenses?

17 THE DEFENDANT: Your Honor, I discussed this with
18 Attorney Dratel without mentioning the name.

19 THE COURT: Okay. Without mentioning the name of the
20 firm? The law firm? Or?

21 THE DEFENDANT: Yes, your Honor. I did not disclose
22 the name of the firm, but I asked him if there was another firm
23 that I would want to represent, would there be any issue or
24 not.

25 THE COURT: I got it.

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1 And, Mr. Dratel, are you now -- of course the names
2 are public. Are you okay, from your point of view, with
3 Mr. Harrison's joining the defense team in this case?

4 MR. DRATEL: Yes, your Honor. Based on Mr. Atilla's
5 answers, yes.

6 THE COURT: Correct.

7 MR. DRATEL: Just one correction, your Honor? I'm
8 appointed, not retained. I think the Court said retained but
9 I'm appointed.

10 THE COURT: Ah. Oh, correct. That is correct.

11 INTERPRETER: I'm sorry, your Honor.

12 Could you please repeat that?

13 MR. DRATEL: Sorry. That I am appointed by the Court,
14 not retained by Mr. Atilla.

15 THE COURT: Do you understand also, Mr. Atilla, that
16 if Halkbank were to stop or cease paying your legal fees and
17 expenses and if you are unable to pay them yourself, then
18 McDermott could potentially seek to withdraw -- they would seek
19 permission to withdraw as your attorneys in this case?

20 You realize that that's a possibility?

21 THE DEFENDANT: I did discuss this matter with the
22 firm and they told me that they will continue to represent me
23 if there are any issues arise like that.

24 THE COURT: Good.

25 So, after considering what has been said today about

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1 Halkbank's payment of McDermott's legal fees and expenses, and
2 also knowing that Halkbank is majority owned by the Republic of
3 Turkey, and also knowing that McDermott represents the
4 permanent delegation of the European Union of the Republic of
5 Turkey, and also having discussed with me in these questions
6 back and forth the ways in which this representation could
7 potentially adversely affect your defense, do you believe that
8 it's in your best interest to continue or to have me allow into
9 the case the McDermott firm and Mr. Harrison and Mr. Evans on
10 your behalf?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And that is what you want to have happen;
13 is that correct?

14 THE DEFENDANT: Yes, your Honor.

15 With your permission, I would like to explain one
16 point.

17 THE COURT: Sure.

18 THE DEFENDANT: First of all, I would like to say that
19 the suggestion about adding the firm of McDermott to my defense
20 case was suggested by Halkbank. That has nothing to do with my
21 satisfaction of my defense attorneys. And, I agreed with them
22 to have an additional help as we are getting closer to the
23 trial date. Therefore, I agree with the strategy, but I would
24 like to include that the suggestions came from Halkbank.

25 THE COURT: I appreciate that. Thank you.

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1 So, let's talk a minute about the potential conflict
2 that results from McDermott's representation of the banks. I
3 forget already. Do we have a list of which of the banks are
4 those you approve?

5 MR. HARRISON: I have a list that we got from the past
6 filings, Judge, that I can hand up.

7 THE COURT: Okay. Mr. Dratel, are you familiar with
8 the list?

9 MR. DRATEL: No, your Honor.

10 THE COURT: Do you want to take a look, off the
11 record, with Mr. Atilla?

12 (Defendant and counsel conferring)

13 MR. DRATEL: Does the Court have the list?

14 THE COURT: I haven't seen it yet.

15 MR. DRATEL: Okay.

16 THE COURT: Yep, I do now. It includes: Bank of New
17 York Mellon, Deutsche Bank, Wells Fargo, Standard Charter, UBS,
18 Bank of America, HSBC, JP Morgan Chase, Bank of Tokyo
19 Mitsubishi New York, Banca Intesa, and Citibank. So that's, I
20 think, actually several names more than the so-called victim
21 banks in our case.

22 Am I right about that, Mr. Lockard?

23 MR. LOCKARD: Yes, your Honor.

24 THE COURT: So, okay.

25 MR. HARRISON: We took the most expansive approach.

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1 THE COURT: I appreciate that. I gotcha.

2 So, you have it now in front of you, right? And I am
3 going to make this list of banks Exhibit B to today's
4 proceeding.

5 MR. HARRISON: Thank you, your Honor.

6 THE COURT: Mr. Lockard, will you tell us which of
7 these are greater than or in excess of the so-called victim
8 banks?

9 MR. LOCKARD: Banca Intesa and Bank of Mitsubishi New
10 York are banks that have not been previously identified as
11 victim banks but are relevant banks in the discovery and
12 evidence.

13 THE COURT: You know, I didn't think to ask you this
14 and let me ask you this, Mr. Harrison.

15 So, has McDermott made any structural arrangements to
16 avoid any overlap between your representation of Mr. Atilla in
17 this case and your firm's or your representation of the banks
18 on Court Exhibit B? Or will you, if you haven't?

19 MR. HARRISON: Yes, Judge.

20 We either have or we are in the process of doing so,
21 with the exception of the issue that we talked about in the
22 back.

23 THE COURT: Which is your representation.

24 MR. HARRISON: Correct, your Honor.

25 THE COURT: Okay.

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1 And do you have any, in very general terms if you
2 know, what kind of arrangements are made or will be made?

3 MR. HARRISON: Well, since Mr. Evans and I don't have
4 anything to do with any of these other representations of any
5 of these other banks, again, with the exception of the one that
6 I talked to your Honor in the back about and talked to
7 Mr. Atilla about today, we are just making sure that we don't
8 have anything to do with those representations or talk about
9 this case to the partners that represent those clients.

10 THE COURT: And that would be vice versa as well?

11 MR. HARRISON: Yes, your Honor.

12 THE COURT: Okay.

13 Mr. Atilla, the next question is whether the
14 McDermott -- Mr. Harrison has, and/or Mr. Dratel have discussed
15 with you this list of banks that are clients of McDermott firm
16 and which includes some of what we have called the victim banks
17 in this proceeding of which I think there were nine,
18 Mr. Lockard; is that correct?

19 MR. LOCKARD: Yes, your Honor.

20 THE COURT: So, have you taken -- had a chance to take
21 a look at this list?

22 THE DEFENDANT: I just looked at it.

23 THE COURT: And, has Mr. Harrison informed you that
24 even though they personally may not participate in the
25 representation of these banks on the list with one exception

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1 which would be no. 9, they nevertheless they, that is to say
2 the McDermott firm, have ethical obligations owed to the banks
3 because they are clients of the law firm that Mr. Harrison
4 works for?

5 Did you have that discussion with him?

6 THE DEFENDANT: Yes, we talked about it.

7 THE COURT: And, have you also discussed that with
8 Mr. Dratel as well?

9 THE DEFENDANT: Yes, we talked about it.

10 THE COURT: And, you understand the fact that your
11 McDermott lawyers -- Mr. Harrison and Mr. Evans -- that they
12 represent you and their firm simultaneously represents these
13 bank clients and may lead them to have loyalties divided as a
14 firm divided between yourself and the bank client?

15 You understand that?

16 THE DEFENDANT: Yes, I understand.

17 THE COURT: And you understand that even though the
18 McDermott attorneys may have these divided loyalties you,
19 nevertheless, are entitled to have counsel who have no divided
20 loyalties who are loyal only to you?

21 You understand that?

22 THE DEFENDANT: I understand.

23 THE COURT: And, do you understand that because of
24 these, what I am calling divided loyalties, your McDermott
25 lawyers might have an incentive, in some instances, to put the

HBL5atic3

1 interests of the bank clients before yours?

2 Do you realize that?

3 THE DEFENDANT: I hope it won't happen but I do
4 understand.

5 THE COURT: Okay.

6 And so, I am going to give you some examples of the
7 ways in which it could happen, that is to say ways in which the
8 McDermott lawyers' representation of these banks could
9 adversely affect their representation of you.

10 So, for example, it could impact whether and when they
11 recommend or don't recommend that you plead guilty in this
12 case.

13 Do you realize that?

14 THE DEFENDANT: Yes, I understand.

15 THE COURT: And, do you understand that it might come
16 into play at such time that you should seek or not to seek to
17 cooperate with the U.S. government in this case? Do you
18 realize that?

19 THE DEFENDANT: I understand.

20 THE COURT: And, do you realize that these potential
21 conflicts could come into play in their advising you what
22 defenses you should raise in this case? You realize that?

23 THE DEFENDANT: I understand.

24 THE COURT: And, do you also realize that it could
25 impact their advice as to whether you should proceed to trial

HBL5atic3

1 in this case including any interests on the part of the bank
2 clients to avoid the public trial? Do you realize that?

3 THE DEFENDANT: Yes, I understand.

4 THE COURT: And, do you understand that it could also
5 include their advice to you as to whether you should testify at
6 trial?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: And, if it came to that, it might also
9 impact the advice they give you as to which, if any, bank
10 client witnesses should be cross-examined and what questions
11 they should be asked upon cross-examination?

12 You realize that?

13 THE DEFENDANT: I understand.

14 THE COURT: And, do you understand that it might
15 impact which, if any, bank client witnesses should be
16 subpoenaed and called to testify and what other evidence, if
17 any, should be sought concerning the banks?

18 THE DEFENDANT: I understand.

19 THE COURT: And, this relationship could also impact
20 their advice to you as to what arguments to make on your behalf
21 to the jury at trial?

22 THE DEFENDANT: Yes, I understand.

23 THE COURT: And, do you also understand it could
24 impact their advice to you as to what arguments to make to the
25 Court and what facts to bring to the Court's attention before

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1 trial, during trial, and if it should happen, at your
2 sentencing if you were to be convicted?

3 Do you understand that?

4 THE DEFENDANT: Yes, I understand.

5 THE COURT: Just hold on for one second.

6 (Pause)

7 THE COURT: So, counsel have asked me to present to
8 you also some examples of potential conflicts and to run them
9 by you, as follows:

10 Do you understand that your McDermott attorneys may
11 not wish to take positions in this case before trial or during
12 trial, or at sentencing or on appeal, if those events were to
13 happen, that are critical of the bank clients even if
14 criticizing those banks might help your defense?

15 Do you realize that?

16 THE DEFENDANT: Yes, I'm aware of that.

17 THE COURT: Are you also aware that your McDermott
18 attorneys may have access to or may have learned confidential
19 information from bank clients that they represent but that they
20 would absolutely be prohibited from providing this information
21 to you or members of your defense team for use in your defense,
22 even if that information could be helpful in your defense
23 because of such things as attorney-client privilege?

24 Do you realize that?

25 THE DEFENDANT: I understand.

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1 THE COURT: And, do you understand that the McDermott
2 attorneys may be limited in making arguments about your level
3 of involvement or non-involvement in the offense or the crimes
4 which are alleged in this case to have occurred or your role,
5 if any, in those offenses, or concerning your culpability?

6 Are you, potentially, of the limitations of that
7 nature?

8 THE DEFENDANT: Yes, I understand.

9 THE COURT: Are you aware that you have other counsel,
10 including Mr. Dratel, for example, apart from the McDermott
11 attorneys who, if necessary, would decide with you whether or
12 not to engage in the following activities on your behalf and,
13 in fact, will engage in these activities, if appropriate? One
14 is to use or advise you on the use of Court process to compel
15 the production of documents from the bank clients or to compel
16 the attendance of witnesses who are employees or agents of the
17 bank clients.

18 Do you realize that? That advice will be available to
19 you?

20 THE DEFENDANT: Yes, I'm aware of it.

21 THE COURT: And are you also aware that counsel, other
22 than the McDermott attorneys, will be available to help you get
23 through or undertake cross-examining witnesses who are
24 employees of the bank clients should they be called to testify
25 at your trial?

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1 THE DEFENDANT: Yes.

2 THE COURT: And, are you also aware that you will have
3 other counsel apart from the McDermott attorneys who, upon
4 consultation with you, might accuse the bank clients of knowing
5 about or being complicit in, or otherwise not being a victim of
6 the alleged illegal transactions that you are charged with?

7 Do you realize that?

8 THE DEFENDANT: I am aware of that.

9 THE COURT: Do you think then that you understand
10 these examples of potential problems and potential resolutions
11 that I have been explaining to you with respect to the banks
12 and the bank clients of McDermott?

13 THE DEFENDANT: Yes, I understood, your Honor.

14 THE COURT: Then could you tell me, in your own words,
15 what that understanding is, that is to say, what is your
16 understanding of potential conflicts of interest related to the
17 bank clients of the McDermott firm in this situation?

18 THE DEFENDANT: Of course.

19 I understand that this company, when they're
20 representing with bank relationship or the issues that will
21 arise, they will act on my behalf and they will protect my
22 benefits.

23 THE COURT: But they may not -- those lawyers who may
24 do that may not be the McDermott lawyers, they may be one of
25 your other counsel.

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1 Do you realize that?

2 THE DEFENDANT: Yes, I know that, and I am aware of
3 that, your Honor.

4 THE COURT: Do you understand that perhaps the
5 greatest danger is our inability to foresee all of the possible
6 potential conflicts that might arise because of McDermott's
7 simultaneous representation of the bank clients and you?

8 Do you realize that?

9 THE DEFENDANT: I'm really aware of it, yes.

10 THE COURT: And, is my understanding correct that
11 there are no bank waivers with respect to the McDermott list of
12 banks, that is to say waivers that they've signed that say, in
13 effect, that it is okay for you, Mr. Harrison and Mr. Evans, to
14 represent Mr. Atilla?

15 MR. HARRISON: Judge, we have had conversations with
16 most, if not all of the banks on the list. We haven't gotten
17 any indication that they have a problem with it. They have
18 indicated that they would -- most of them have indicated that
19 they would submit waiver letters as they have previously in
20 this case already for other firms, if necessary.

21 THE COURT: I would appreciate just if you would
22 follow up and say we would like to have them, if possible.

23 MR. HARRISON: Sure. Will do.

24 THE COURT: Okay.

25 So, let's now turn to this other topic of potential

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1 conflicts posed by McDermott's representation of the permanent
2 delegation to the European Union of the Republic of Turkey.

3 Have the attorneys from McDermott, including
4 Mr. Harrison and Mr. Evans, advised you that their law firm
5 also represents the permanent delegation to the European Union
6 of the Republic of Turkey?

7 THE DEFENDANT: Yes. They told me.

8 THE COURT: And, have they informed you that even
9 though they personally may not participate in representing the
10 permanent delegation to the European Union of the Republic of
11 Turkey that they nevertheless, as a part of McDermott firm,
12 have ethical obligations to the permanent delegation to the
13 European Union of the Republic of Turkey because that is a
14 client of their law firm?

15 THE DEFENDANT: Yes. They informed me.

16 THE COURT: And, do you understand that the fact that
17 your attorneys from McDermott simultaneously represent you and
18 the permanent delegation to the European Union of the Republic
19 of Turkey, may lead to divided loyalties between yourself and
20 that permanent delegation, not unlike the situation involving
21 their representation of the banks?

22 THE DEFENDANT: Yes, I understand.

23 THE COURT: Do you realize that that divided loyalty,
24 in some instances, could cause your lawyers from -- potentially
25 from McDermott, to have some incentive to put the interests of

HBL5atic3

1 the permanent delegation over yours or before yours?

2 Do you realize that?

3 THE DEFENDANT: Yes, I understand.

4 THE COURT: And here are those similar examples that I
5 gave with respect to the banks that could impact or could
6 eventuate from this dual representation, so it could cause some
7 impact upon your attorneys' advice to you as to whether and
8 when you should plead guilty in this case.

9 Do you realize that?

10 THE DEFENDANT: Yes, I understand.

11 THE COURT: And also as to whether or not you should
12 seek to cooperate with the government, it could impact that
13 advice?

14 Do you realize that?

15 THE DEFENDANT: Yes, I understand.

16 THE COURT: Do you also realize that it could impact
17 the defenses that they recommend that you raise?

18 Do you realize that?

19 THE DEFENDANT: Yes, I understand.

20 THE COURT: And it also could impact whether you,
21 their advice as to whether or not you should testify at trial?
22 Do you realize that?

23 THE DEFENDANT: Yes, I understand.

24 THE COURT: And, do you also realize that it could
25 impact which witnesses should be cross-examined and what

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1 questions they should be asked?

2 Do you realize that?

3 THE DEFENDANT: Yes, I understand.

4 THE COURT: Do you realize it could impact which
5 witnesses should be called and what other evidence might be
6 offered on your behalf?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: And do you realize it could also impact
9 the arguments that -- their advice to you as to what arguments
10 should be made, on your behalf, to the jury?

11 THE DEFENDANT: Yes.

12 THE COURT: And, also, it could impact what arguments
13 to make -- what advice they give you as to what arguments to
14 make to the Court and what facts to bring to the Court's
15 attention before trial, during trial, and at your sentencing?

16 Do you realize that?

17 THE DEFENDANT: Yes, I understand.

18 THE COURT: And so just to be -- to leave no stone
19 unturned, let me expand on these examples as I did with respect
20 to the bank's.

21 First of all, do you understand that your interest in
22 a public trial of the charges in this case may be different
23 from the interests of the permanent delegation to the European
24 Union of the Republic of Turkey?

25 Do you realize that?

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1 THE DEFENDANT: I understand.

2 THE COURT: And, do you realize that your attorneys
3 from McDermott cannot advise you to proceed to trial in a
4 manner that would be adverse to the interests, if there were
5 such a possibility, of the permanent delegation to the European
6 Union of the Republic of Turkey?

7 Do you realize that?

8 THE DEFENDANT: I understand.

9 THE COURT: And, another example, do you understand
10 that your attorneys from McDermott may advise you not to take
11 positions in this case, either before trial, during trial, or
12 at sentencing if that were to come about, that are critical of
13 the permanent delegation to the European Union of the Republic
14 of Turkey, even if criticizing them might help your defense?

15 Do you realize that?

16 THE DEFENDANT: Yes, I understand.

17 THE COURT: And, another example, do you understand
18 that your attorneys from McDermott may advise you not to seek
19 to admit certain evidence in this case that they view as
20 adverse to the interests of the permanent delegation to the
21 European Union of the Republic of Turkey even if by admitting
22 that evidence, that would help your defense?

23 Do you realize that?

24 THE DEFENDANT: Yes.

25 THE COURT: And, do you also realize or understand

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1 that your attorneys from McDermott, that is to say Mr. Harrison
2 and Mr. Evans, cannot negotiate on your behalf in a manner that
3 would be adverse to the interests of the permanent delegation
4 to the European Union of the Republic of Turkey?

5 Do you realize that?

6 THE DEFENDANT: I understand.

7 THE COURT: And, do you understand that, relatedly,
8 they could not use any confidential information they may have
9 learned pursuant to their representation of the permanent
10 delegation to the European Union of the Republic of Turkey upon
11 your behalf?

12 THE DEFENDANT: I understand.

13 THE COURT: And, do you understand also that the
14 McDermott attorneys cannot counsel or advise you to accept a
15 disposition of this case that harms or is adverse to the
16 interests of the permanent delegation to the European Union of
17 the Republic of Turkey?

18 THE DEFENDANT: I understand.

19 THE COURT: You think then you also understand all
20 these examples that I have posed to you?

21 THE DEFENDANT: I understood, your Honor.

22 THE COURT: So, you know, I have a thought, and
23 correct me if I am wrong, but in talking about the permanent
24 delegation, we are in fact talking about a form of
25 representation of the Republic of Turkey, right, whether it is

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1 called delegation or whatever but it is really a representation
2 of Turkey.

3 MR. HARRISON: Yeah. My understanding, it is a
4 specific government body of the Republic of Turkey.

5 THE COURT: Fair enough.

6 So, then, Mr. Atilla, could you tell me, in your own
7 words, how you understand this potential conflict of interest
8 related to the permanent delegation to the European Union of
9 the Republic of Turkey?

10 THE DEFENDANT: Your Honor, I don't know if the
11 permanent delegation to the European Union organization has any
12 conflict with my interest but if there are any issues that
13 arises like that, I understand the position of my defense
14 lawyers.

15 THE COURT: Thank you.

16 And finally on this topic, you understand that the
17 greatest difficulty or danger to you is the inability of any of
18 us to foresee all of the possible conflicts that might arise
19 because McDermott simultaneously represents you and the
20 permanent delegation to the European Union of the Republic of
21 Turkey?

22 Do you realize that?

23 THE DEFENDANT: I understand.

24 THE COURT: Okay. We are getting to the end. Let me
25 talk to you now about the right for you to have conflict-free

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1 representation.

2 Do you understand that in every criminal case,
3 including this one, the defendant is entitled to the assistance
4 of counsel whose loyalty to him is undivided, who is not
5 subject to any factor that might in any way intrude upon an
6 attorney's loyalty to your interests, in other words you
7 understand that you are entitled to attorneys who have only
8 your interests in mind and not the interests of any other
9 client?

10 Do you realize that?

11 THE DEFENDANT: I understand.

12 THE COURT: And correct me if I am wrong, we had
13 Curcio proceedings earlier that now, in addition to the one
14 today, Mr. Dratel, as counsel, has no such other interests. Is
15 that right, Mr. Dratel?

16 MR. DRATEL: That's correct, your Honor.

17 THE COURT: And again, just so it is clear -- I think
18 it is abundantly clear -- have you agreed to represent
19 Mr. Atilla throughout the trial?

20 MR. DRATEL: Yes, your Honor.

21 THE COURT: Mr. Atilla, have you received any
22 inducements, promises or threats with regard to your choice of
23 counsel in this case?

24 THE DEFENDANT: Nothing like that.

25 THE COURT: And you mentioned that McDermott was

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1 recommended to you by Halkbank but are you in fact the person
2 or the one who decided to have them represent you in this case?

3 THE DEFENDANT: It happened like this first. I wanted
4 to look at the division and the contract between the bank and
5 McDermott. After I reviewed that, I decided that it is
6 appropriate.

7 THE COURT: Thank you.

8 And you understand that you have a right to consult
9 with an attorney free from any conflicts of interest about this
10 particular issue?

11 THE DEFENDANT: Yes, I understand.

12 THE COURT: For that purpose you certainly have had
13 the right and have the right to consult with Mr. Dratel who is
14 conflict-free and has been appointed as your independent
15 counsel and have had the opportunity to consult with him about
16 this aspect and today's proceeding as well?

17 THE DEFENDANT: Yes; and I used his help very often.

18 THE COURT: And you have also discussed this issue
19 with Mr. Harrison, have you not?

20 THE DEFENDANT: Yes, I have discussed it with him.

21 THE COURT: Do you feel you need any more time to
22 discuss it with him or with Mr. Dratel, for that matter?

23 THE DEFENDANT: No. I believe that we agreed on the
24 general terms.

25 THE COURT: Okay.

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1 And so, after considering all that I have said today
2 and that you have responded to me about the ways in which
3 McDermott's representation of the bank clients may adversely
4 affect your defense, do you nevertheless believe that it is in
5 your best interest to continue with McDermott as one of the law
6 firms representing you in this case?

7 THE DEFENDANT: That's what I think, yes.

8 THE COURT: And also, after considering what I have
9 advised you and what you know about the possibility that
10 Halkbank, who is paying for the McDermott firm's
11 representation, considering that they may have an interest in
12 positions different from ones that you may wish to take, do you
13 believe that it is in your best interest to continue with
14 McDermott who are counsel being paid by Halkbank?

15 THE DEFENDANT: Yes.

16 THE COURT: And that's your wish, to continue with the
17 McDermott firm?

18 THE DEFENDANT: Yes.

19 THE COURT: And two more questions and then I think we
20 are -- well, no, a few more questions.

21 After considering all that I have said today about the
22 ways in which the McDermott firm represents the permanent
23 delegation to the European Union of the Republic of Turkey may
24 adversely affect your defense, do you believe that it is in
25 your best interest to nevertheless continue with the McDermott

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1 firm as counsel in this case, or as one of the counsel in this
2 case?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that by choosing to
5 continue with the McDermott firm in this case you are waiving
6 your right to be represented exclusively by attorneys who have
7 no potential conflict of interest?

8 Do you realize that?

9 THE DEFENDANT: I understand.

10 THE COURT: And are you knowingly and voluntarily
11 waiving your right to conflict-free representation by taking on
12 the McDermott firm as part of your team?

13 THE DEFENDANT: I do.

14 THE COURT: And if, and only if, you were to be
15 convicted in this case, do you waive any post-conviction
16 argument, on appeal or otherwise, that by virtue of the
17 McDermott firm representation of the bank clients or the
18 permanent delegation to the European Union of the Republic of
19 Turkey, do you waive arguments that you were denied effective
20 assistance of counsel?

21 THE DEFENDANT: Yes.

22 THE COURT: And, after considering what I have said
23 and what you have said and how you advised me, do you feel that
24 you are able to knowingly and voluntarily make decisions about
25 your defense in these proceedings in this court?

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1 THE DEFENDANT: Yes.

2 THE COURT: And then, finally, is there anything that
3 I have said or mentioned that you wish to have either me or
4 Mr. Dratel or any of your other counsel explain further?

5 THE DEFENDANT: I believe I understood it all. Thank
6 you very much.

7 THE COURT: Any counsel, either for the government or
8 defense counsel, have anything that they wish me to pose to
9 Mr. Atilla that I have not?

10 MR. LOCKARD: No, your Honor.

11 MR. DRATEL: No, your Honor.

12 MR. ROCCO: No, your Honor.

13 THE COURT: Okay.

14 So, I think that concludes our work for today and I am
15 pleased to have the appearance in this case of Mr. Harrison and
16 Mr. Evans, and we look forward to working with you over the
17 weeks ahead.

18 MR. HARRISON: Thank you, Judge. Likewise.

19 Sorry. Just one question?

20 THE COURT: Sure.

21 MR. HARRISON: If you are going to attach the list we
22 handed up, that's fine. Can we do it under seal based on the
23 issued we discussed in the back, please?

24 THE COURT: With respect to one of the banks?

25 MR. HARRISON: Yes; so I would like to have the whole

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1 list sealed.

2 THE COURT: I have no problem. Does anybody have a
3 problem with that?

4 MR. ROCCO: I have no problem.

5 MR. HARRISON: Michael, I can explain why.

6 MR. LOCKARD: Okay.

7 THE COURT: My suggestion, unless you don't want one,
8 I would like to take a two-minute break and then I would like
9 to hear your thoughts about the issue I raised earlier about
10 the anonymous jury. You may want to consult among yourselves.

11 (Recess)

12 THE COURT: So, the only remaining issue that I am
13 aware of is the issue of an anonymous jury which I suggested
14 earlier.

15 Do you have any thoughts about that?

16 MR. ROCCO: Well, your Honor, in principle we, as a
17 group, defense lawyers oppose it, think it is certainly
18 unnecessary here and it is highly prejudicial. This is not an
19 organized crime case. There may be concerns but, quite
20 frankly, I don't think that there is concerns for the safety of
21 jurors and jurors are very, very sensitive to these things.

22 And if I may, your Honor, with all due respect to the
23 press pool, I can't imagine that this won't wind up in the
24 press, just the fact that we are talking about an anonymous
25 jury. And that is very disturbing to me because I think it is

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1 very prejudicial to Mr. Atilla. It is very unusual, there have
2 been no witness threats that I'm aware of, and certainly
3 nothing has anything to do with Mr. Atilla in terms of threats.
4 And, jurors invariably draw inferences and I just think that an
5 anonymous jury is pregnant with the notion that jurors are in
6 danger or there is danger associated with the case and we
7 haven't seen that, your Honor.

8 MR. LOCKARD: Your Honor, I think the government
9 agrees that the full anonymous jury procedures in this case are
10 unnecessary and would have certain drawbacks to them, but we
11 did discuss with Mr. Rocco over the break some suggestions of
12 sort of interim measures that would not raise some concerns
13 that Mr. Rocco has raised, but at the same time would provide a
14 degree of confidentiality of the identities of the jurors.
15 And, again, putting aside the issue of juror safety, I think
16 Mr. Rocco highlighted one reason why it may be appropriate
17 because of the press coverage, selecting a jury, and ensuring
18 free and fair deliberations by the jury would be facilitated by
19 some of those measures in a way that would not suggest that the
20 defendant or individuals associated with the defendant are a
21 threat to their safety.

22 And, I think perhaps with a little more discussion
23 with defense counsel, we may come up with some proposals that
24 we can submit Court, either jointly or separately.

25 THE COURT: Yes.

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1 So, just so you understand, safety wasn't even on my
2 radar. I am concerned with the integrity of the proceedings,
3 and I am not only concerned with the privacy of particularly --
4 and I think jurors would appreciate, and if you come up with an
5 instruction, joint instruction, what I had in mind was just not
6 disclosing their names in court.

7 MR. ROCCO: I don't think that's a problem.

8 THE COURT: Oh. That's all I had in mind.

9 MR. ROCCO: Sure. I don't have a problem with that.

10 THE COURT: I would rather have jurors identify
11 themselves by number.

12 MR. ROCCO: Yes, sure.

13 THE COURT: That is really the extent of what I had in
14 mind.

15 MR. DRATEL: Your Honor, having done this a number of
16 different ways including the way that is being discussed now,
17 it is important that the jurors know that the parties know who
18 they are, because that way they don't get the sense that the
19 threat to the integrity of the process comes from Mr. Atilla.

20 THE COURT: Right.

21 MR. DRATEL: That it comes from outside, that is what
22 the court is concerned about.

23 THE COURT: Yes.

24 MR. DRATEL: As long as that is done in a firm and
25 declarative way, that can protect the jurors from outside

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1 influences.

2 THE COURT: I think we have agreement, actually, but
3 why don't you come up with the least restrictive measures and
4 whatever you think is needed to ensure that there is no
5 negative inference drawn against Mr. Atilla which is
6 certainly -- I would agree with that.

7 So, frankly, as I said before, all I had in mind is
8 them identifying themselves by number as opposed to by name.
9 Nothing more restrictive than that. But, I will see what you
10 come up with. Hopefully you come one a joint proposal and a
11 joint instruction, if you want me to give one in relation
12 thereto.

13 Okay. Great to see you all. Thank you very much.

14 MS. FLEMING: Judge, not so fast, please? I have a
15 couple I have to raise. You don't want us to have suspicions.

16 We had a denial of Touhy. May I please make a
17 submission of why we need Touhy subpoenas?

18 The FBI said we weren't sufficiently clear in our
19 request for certain things of the case agent. I think we made
20 an application to the Court and we are going to have to do a
21 submission for that.

22 THE COURT: All right.

23 MS. FLEMING: Secondly, on some of the discovery and
24 Jencks materials that we got, which it is just an enormous
25 volume of it and Mr. Rocco can give you the numbers, but there

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1 was a lot of redacted materials. We think the unredacted
2 materials -- we don't have them, they should at least be an
3 exhibit to the Court so that if there is an appeal that that's
4 there, that's what the mechanism should be. And, there are at
5 least one witness, maybe more, that, and we agree with the
6 government on this, that we are not even allowed to share the
7 name of the witness with our client. Again, just not anything
8 to do with him, just the general integrity of the proceedings.
9 But, of course, it handicaps us in terms of doing any
10 investigation for cross-examination. And we can't even raise
11 the name innocently because we're, candidly, we're afraid if we
12 even suggest the name to anybody, it is going to end up in the
13 press some way or another.

14 So, we alerted the government to this. We intend to
15 recall whoever these witnesses are.

16 THE COURT: To what?

17 MS. FLEMING: We are going to recall them so that we
18 have time, once their identities are public after they've
19 testified, to do some investigation and at that point the
20 concerns about whatever the concerns are will be lifted but it
21 will give us the time do investigation in other places and I
22 wanted to make sure that the Court was aware of that.

23 Mr. Rocco wants to make it clear, we don't want to
24 give the name to an investigator, we don't want to give the
25 name to anybody and we have been scrupulous about observing

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1 that and I think -- the fact that nothing has appeared shows
2 that and we want it to continue that way.

3 And just finally, Judge, there are certain redactions.

4 THE COURT: So far I am in agreement with what you are
5 suggesting.

6 MS. FLEMING: That is wonderful, Judge.

7 Judge, there are some redactions, we are still going
8 through the materials, there really is a lot of it. There are
9 some redactions that we really believe we are entitled to see
10 what is there and these are things that are covered by the
11 protective order so I can't raise them here.

12 THE COURT: So, raise them in the first instance with
13 the government, see if you can't --

14 MS. FLEMING: I have. We don't agree. Should I --
15 what should I do?

16 THE COURT: Raise them again. They tend to get more
17 reasonable as you get closer to trial.

18 MS. FLEMING: So, here is one of my reasonableness.

19 We have gotten more reasonable on stipulations. We
20 have asked that and I think that they have agreed they're going
21 to give us the heads up the day before a witness and which
22 exhibits are going to be used, but our exhibit list is up to 69
23 pages, small spaces. 69 pages and there are 6,000 exhibits.

24 You know, this is a compressed trial. We haven't
25 gotten an adjournment. We have asked them please let us know

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1 what exhibits they're really using and it is really time for us
2 to know which exhibits they're really going to use at trial.

3 THE COURT: I think that's a fair point, so.

4 MS. FLEMING: And a witness list. We do have the 3500
5 material which, of course, gives us a hint, but it really would
6 be fair to know these things at this point.

7 THE COURT: You might be able to narrow that down for
8 everybody's sake.

9 MR. DRATEL: And, your Honor, I think if Mr. Harrison
10 and I are to meaningfully assist, one day in advance for
11 witnesses just doesn't -- I can't -- and none of us can absorb
12 anything in a meaningful way one day in advance to be of
13 assistance to Mr. Rocco. So, I think that -- and that we
14 should have a week's worth of witnesses so that we can
15 participate in some way in a way that makes sense.

16 THE COURT: Mr. Lockard?

17 MR. LOCKARD: So, obviously by trying to identify
18 government's exhibits we are making them available more than a
19 week in advance of trial. We have agreed to commit to, at the
20 least, identifying witnesses and exhibits that we anticipate
21 using the following day, the day before. If we can do better
22 than that, we will.

23 THE COURT: He is saying, and I think, in fact, given
24 the fact that particularly Mr. Harrison is new to the case, you
25 could enhance that somewhat.

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1 MR. LOCKARD: He is joining an entrenched team. We
2 are not trying to hide the ball. We will do what we can to try
3 and facilitate this. I think there are somewhat less than
4 6,000 exhibits, in total.

5 THE COURT: I hope so.

6 MR. LOCKARD: Some of them are -- you know, there are
7 bank transactions, there are documents. Some things are in
8 bulk that don't need to be considered individually but are all
9 nonetheless collectively relevant. But, we will continue to
10 work with defense counsel on these matters and we are happy to
11 provide -- we have provided 3500 material. We will provide a
12 witness list, that's not a problem. I think there are, just
13 from the government's point of view, a couple of -- a couple --
14 there are a number of remaining motions *in limine* outstanding
15 that would affect the trial, and specifically the first couple
16 days and first week of trial. I think in discussions with
17 Mr. Rocco and Ms. Flemming in particular, we have made progress
18 on some of those issues, but there are still motions to
19 preclude a number of expert witnesses and to limit expert
20 testimony and to limit cross-examination of various witnesses.

21 THE COURT: I get you.

22 So, today is Tuesday. Why don't you, by noon
23 tomorrow, send me a joint letter of what's still open and
24 hopefully with some reasoned discussion between now and then,
25 that can be a short letter.

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1 So, how it is left is you are going to spend some time
2 with each other meeting and conferring and winnowing down
3 whatever both sides think is left for the Court to resolve and
4 that you will present to me by noon tomorrow.

5 MR. LOCKARD: Yes, your Honor. We have had several
6 rounds, we will have some more rounds.

7 THE COURT: Great.

8 MR. LOCKARD: And I think the government would just
9 ask if the Court, whenever the Court has a version of the voir
10 dire that it intends to use on Monday, we would just
11 respectfully request a copy of that prior to Monday.

12 THE COURT: Yes. I think I am going to make that
13 public as well.

14 MR. LOCKARD: Thank you, your Honor.

15 THE COURT: I am close to having that done.

16 Thanks. Good to see you.

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